with a special remedy. Unlike section 1 of the Statute of Anne or section 738 of the Civil Procedure Code, section 20(1) does not forbid the removal of the movable property of the tenant under seizure unless the arrears of rent of landlord (subject to a maximum amount) have been paid up. But it imposes an obligation on the Sheriff upon being notified of the writ of distress to pay to the landlord out of the proceeds of sale of the movable property seized by him, after payment thereout of the expenses of the sale, in priority to any other payment, the amount of arrears of rent due to the landlord, subject to the maximum amount stated in the proviso. The words, "in priority to any other payment," in section 20(1) are both explicit and wide. In my judgment, the obligation of the Sheriff under section 20(1) in this case is not affected by the winding up proceedings of the tenants. The proceeds from the sale of the movable property of the tenants in his hands are not "free" from the right of the Sheriff "for his own indemnity." Section 335(2) of the Companies Act, save that it relates to winding up of a company, is otherwise *in pari materia* with section 11(2) of the Bankruptcy Act, 1890, and, again, quoting the words of Lindley M.R. when he dealt with section 11(2) of the Bankruptcy Act, section 335(2) "deals with the rights of the execution creditor, the execution debtor and the Sheriff when he has no legal duties to third parties; but the section is limited to ordinary cases of execution."

The effect I give to section 20(1) of the Distress Act is consistent with a situation where movable property of a tenant is not under seizure by the Sheriff in execution and his landlord has put in force a distress thereon for arrears of rent due from his tenant prior to the presentation of the winding up petition against the tenant – in such an event the landlord would be entitled to the proceeds of sale from the movable property distrained up to an amount due for the past twelve months' rent, unaffected by the operation of section 334 or section 335 of the Companies Act. If the distress is put in force after the winding up petition has been presented against the tenants, it is of course void: section 260 of the Companies Act. Equally, if an execution against a tenant's movable property is put in force after the winding up petition against such debtor has been presented, the execution is void and the landlord would not be in a position to take out a writ of distress and avail himself of section 20(1) of the Distress Act, because in such a case "the execution is itself overridden and rendered void" by section 260 of the Companies Act: see the judgment of Lindley M.R. in *In re Mackenzie* at p. 576.

I am aware that section 20(1) of the Distress Act thus applied would result in the applicants as the landlords having a priority over all the other unsecured creditors of the tenants. However, landlords have always enjoyed a special remedy provided by law for recovery of arrears of rent from their tenants as can be seen from the legislation on the right of distress. Unlike other creditors of the tenants, they do not have to initiate an action for recovery of certain amount of arrears of rent due; they are entitled to resort to the summary procedure of levying distress provided by law. It is significant that section 45(1) of the Bankruptcy Act (Cap. 18) allows a landlord to distrain on the goods of his tenant for rent at any time either before or after the commencement of the bankruptcy, except that if the distress is levied after the commencement of bankruptcy it shall be available only for 3 months' rent accrued due prior to the date of the order for adjudication.

I therefore allow the application and declare that the applicants are entitled to the net proceeds of sale of the movable property of the tenants in the hands of the Sheriff and order the net proceeds to be paid to the applicants.

Application allowed.

Solicitors: *J. Y.P. Chia & Co*

THE "AVRO VENTURE";

FORSYTHE INTERNATIONAL LTD. v. "AVRO VENTURE", OWNERS OF

[O.C.J. (Sinnathuray J.) August 20, 1986]

[Singapore – Admiralty in Rem No. 293 of 1984]

Practice and Procedure – Preliminary objection – Application to strike out action for want of jurisdiction – Conditional appearance must be entered first – High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4.

A defendant who objects to an irregularity in the writ of summons or the service of the writ or to jurisdiction must, if he wants to raise the ground, enter conditional appearance. In the present case, the defendants were at liberty to raise the issue of jurisdiction *in limine*. They might raise it as a defence to the action. And, they could

have the issue determined first as a preliminary issue. But, as they had entered unconditional appearance, they may not raise it now at this stage of the proceedings.

Case referred to:

(1) *The 'Bilbao'* (1860) Lush. 149; 3 L.T. 338; 167 E.R. 72.

ADMIRALTY *IN REM.*

Eddy Teng Jong Pu for the plaintiffs.

Richard Kuek Chong Yeow for the defendants.

Sinnathuray J.: The plaintiffs' claim in this action, Admiralty *in rem* No. 293 of 1984, is for the sum of US$59,819.45 for bunkers supplied to the defendants' ship "Avro Venture" in the months of November 1983 and January 1984 for her operation or maintenance at the ports of Colombo (Sri Lanka) and Masan (Panama), at the request of the defendants, their servants or agents. The plaintiffs arrested the "Avro Venture" in Singapore on May 19, 1984 and the ship was released at the instance of the defendants producing a banker's guarantee.

On November 22, 1984 the defendants took out an application for the action to be struck out and/or dismissed and for the delivery up and cancellation of the banker's guarantee on the ground that the admiralty jurisdiction of this Court under section 4 of the High Court (Admiralty Jurisdiction) Act (Cap 6) ("the Act") cannot be invoked against the defendants. This application was dismissed by the learned Deputy Registrar. On appeal, I also dismissed the application with costs and refused stay of execution.

I dealt with the appeal on the narrow and fundamental procedural ground raised by the plaintiffs that as the defendants had entered unconditional appearance, they cannot, at this stage of the proceedings, have the plaintiffs' action struck out for want of jurisdiction. I accepted the submission for the plaintiffs that if the defendants wanted to question the jurisdiction of the Court to hear this action, they ought to have entered conditional appearance.

Mr. Kuek for the defendants submitted that the plaintiffs had raised a technical objection only. He urged upon me that as the issue of jurisdiction can be raised *in limine*, though the defendants had entered unconditional appearance, under the inherent jurisdiction, I can set aside the proceedings which, according to him, must fail on the issue of jurisdiction. He conceded, however, that he had no case to support him. In the alternative, he asked for leave to withdraw the unconditional appearance and to allow him to file a conditional appearance.

On the authorities cited to me, in giving my decision, I said that the case of *Bilbao*(1) was most relevant. In that case, the plaintiffs commenced an action and arrested the vessel "Bilbao". The defendants entered unconditional appearance but later raised a plea which went to jurisdiction. It is against that plea that Dr. Lushington in dealing with the application said that although the objection was technical

> ". . . I am of the opinion that an objection of this kind comes too late. The defendants have given an absolute appearance to the action: and after that they cannot be allowed to take a mere formal objection to the jurisdiction. It is true that the Court has occasionally considered questions of jurisdiction at the hearing, but always with great reluctance, and only where there might be danger of the Court proceeding without any jurisdiction at all. The Court is necessarily obliged to be careful not to exceed its jurisdiction; but it will not admit, after absolute appearance, objections of a purely technical kind. To do so might be to do great injustice; for the plaintiffs relying upon the absolute appearance, have allowed the defendants' vessel to be released on bail. This plea must be struck out."

The case, to my mind, reinforces that under the Rules of Court a defendant who objects to an irregularity in the writ of summons or the service of the writ or to jurisdiction must, if he wants to raise the ground, enter conditional appearance. In the present case, the defendants are, of course, at liberty to raise the issue of jurisdiction *in limine*. They may raise it as a defence to the action. And, they can have the issue determined first as a preliminary issue. But, as they had entered unconditional appearance, they may not raise it now at this stage of the proceedings.

It was agreed between the parties that the decision in the above action would also apply to the appeal in Admiralty *in rem* No. 321 of 1984. Accordingly, the appeal against the Deputy Registrar's decision in that action was also dismissed with costs with no stay of execution.

Order accordingly

Solicitors: *Prakash Gurbani & Chong; Haridass Ho & Partners.*